THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.26879 OF 2001

Between:

Y.Malleswara Rao

..Petitioner

and

The Chief General Manager, S.B.I Hyderabad and three others.

…Respondents.

THE HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.26879 OF 2001

ORDER:

By the proceedings of the second respondent dated
05-09-2000, the petitioner, an Assistant Manager (under suspension) in the employment of the State Bank of India, was imposed the penalty of removal from service after a departmental inquiry. Petitioner preferred a departmental appeal to the first respondent. The appeal was rejected by the order dated 20-10-2001 of the appellate authority. Assailing the primary and appellate orders, the writ petition is filed.

By the proceedings dated 12-11-1998, the petitioner was placed under suspension, pending inquiry i.e., on allegations of having committed certain serious irregularities during his tenure as Assistant Manager (Advances) at the Undavalli Branch of the Bank. On 13-08-1999, a charge memo was issued to the petitioner setting out four charges. Briefly, the charges against the petitioner were:

a. that, while officiating as a Branch Manager on 05-11-2004, he had sanctioned Agricultural Cash Credit (ACC) limit of Rs.One lakh to a defaulting borrower without following the scales of finance approved by the District Technical Committee; had arrived at the quantum of finance for raising crops for both rabi and kharif; had disbursed the entire amount in one season; and had earlier recommended crop loans on the same lands to the son and grandson of the borrower by deliberately furnishing wrong information in the control form submitted to the Controlling Authority;

b. that he had misappropriated the amounts received from borrowers for credit to their accounts and had failed to account for the amounts so received in the branch books;

c. that he had recommended ACC limit of Rs.12,000/- to a (specified) borrower even though the earlier crop loan sanctioned to him was outstanding in the "Branch Protested Bills Account" and had also disbursed the crop loan when the borrower paid only a part amount of Rs.8,944/- leaving a debit balance of Rs.4,494/-; and

d. that he failed to follow the scales of finance approved by the District Technical Committee and had arrived at the quantum of finance for raising crops for both rabi and kharif and disbursed the entire amount in one season (in respect of 3 other borrowers).

The petitioner was charged with failure to discharge his duties with utmost integrity, honesty, devotion and diligence and to have violated Rule 50(4) of State Bank of India Officers Service Rules governing his terms of service in the Bank. Enclosed to the charge memo dated 13-08-1999 was a detailed statement of allegations and imputations, on the basis of which the charges were framed.

The petitioner submitted his explanation on
09-12-1998.

The inquiring authority, the Chief Manager of the Bank, submitted his report on 06-03-2000 to the disciplinary authority finding the petitioner guilty of the charges. By a communication dated 08-03-2000, the disciplinary authority communicated a copy of the inquiry report containing the findings on each of the charges and a copy of the proceedings of the domestic inquiry and called upon the petitioner to submit any representation or submission that he desires to make on the report or the findings. The petitioner responded by a letter dated 25-05-2000 addressed to the disciplinary authority merely stating that the inquiring authority does not appear to have perceived or analyzed the record from the point of view of the petitioner; pleading that he belongs to a Scheduled Tribe community; that a sympathetic view be taken and he be exonerated of the charges.

The disciplinary authority cogently and succinctly analyzed the findings of the inquiring authority, the proceedings of the inquiry, the evidence on record and the submissions (so called)/explanation of the petitioner and recorded independent findings of his own in respect of each of the charges and noted his concurrence with the conclusions of the inquiring authority as regards the guilt of the petitioner in respect of each of the charges 1 to 4. This is evident from the note of the disciplinary authority dated 04-09-2000.

The appointing authority – the second respondent, by proceedings dated 05-09-2000, recorded his concurrence with the conclusions of the disciplinary authority and considering the nature of the misconduct established against the petitioner, imposed the penalty of removal from service. The second respondent also recorded that the period spent by the petitioner, under suspension, pending inquiry, ought not to be treated as on duty and that the petitioner would not be entitled to any other payment for this period except the amounts already paid to him as subsistence allowance. By a subsequent proceedings dated 09-09-2000, the disciplinary authority – the third respondent communicated to the petitioner a copy of his note dated 04-09-2000 recording the elaborate examination of the record; report of the inquiring authority and the proceedings of the second respondent dated 05-09-2000. He also intimated the petitioner that he can avail a departmental appeal within the time specified in the proceedings dated 09-09-2000.

The petitioner preferred an appeal to the first respondent on 18-10-2000. As the appeal was not disposed of expeditiously, the petitioner preferred W.P.No.15398 of 2000. The writ petition was disposed of by this Court by an order dated 30-07-2000, directing the appellate authority to expeditiously dispose of the appeal. The first respondent-appellate authority thereupon passed an order dated 20-10-2001, rejecting the petitioner's appeal, concurring with the conclusions of the disciplinary and appointing authorities, both as regards the guilt of the petitioner and the quantum of the punishment (of removal from service) imposed on him.

Sri E.Ayyapu Reddy, the learned counsel for the petitioner, pleaded that the orders of the primary and appellate authorities visiting him with the penalty of removal from service, are invalid, on the following grounds:

a. that the disciplinary authority mechanically passed the order without a rational application of mind to the defence projected by the petitioner

to the charges and without a rational examination of the evidence on record;

b. that charges 1, 3 and 4 do not constitute misconduct and are in the nature of irregularities that do not tantamount to misconduct. Insofar as charge No.2 is concerned, it is conceded that this is a charge of serious misconduct, as the charge is one of misappropriation of the monies of the customers. In respect of this charge, the case of the petitioner is that there was no evidence to support the conclusion of guilt;

c. that the appellate authority failed to afford a personal hearing to the petitioner and, therefore, the order of the appellate authority is in transgression of an essential principle of natural justice. In respect of charge No.2 relating to misappropriation of customers' money by the petitioner, it is additionally contended that the material witnesses who are the account holders, whose amounts are alleged to have been misappropriated by the petitioner, have not been examined and, therefore, the findings and conclusions in respect of Charge No.2 are invalid.

It is also faintly urged on behalf of the petitioner that the conclusions recorded by the inquiring authority, as approved by the disciplinary authority, confirmed by the appointing authority, and further confirmed by the appellate authority are vitiated by the application of a wrong standard of proof. It is contended that the charges will have to be established by proof beyond reasonable doubt. During the course of the hearing however, the learned counsel for the petitioner did not pursue this contention and fairly stated that in a domestic inquiry proceedings, standard of proof beyond reasonable doubt is not the appropriate and established standard. That the standard of proof "beyond reasonable doubt" is inapplicable to departmental inquiries as it is inapplicable to even civil cases, is a well established principle– vide ***State of A.P. Vs. Sree Rama Rao***(). In domestic inquiry it is sufficient if there is some evidence from which a reasonable inference of misconduct could be drawn- vide ***Balipara T Estate Vs. Workmen***( ). However, even in a departmental inquiry conclusions cannot be based on conjunctures, surmises or on suspicion and there should be some evidence which supports the conclusion – vide ***Union of India Vs. H.C.Goel*** ()

As is apparent, the petitioner does not urge any grave procedural irregularities in the conduct of the disciplinary proceedings. According to the petitioner the order of the appellate authority is invalid for failure to provide a personal hearing to him. That aspect of the matter would be dealt with in the course of this Judgment. No procedural infirmity in the conduct of the departmental proceedings by the inquiry officer is alleged or projected.

During the course of the disciplinary inquiry, two witnesses on behalf of department, a former Branch Manager of the Undavalli Branch, during whose substantive tenure as a Branch Manager the petitioner acted as an officiating Branch Manager and another former Branch Manager of the Undavalli Branch who had succeeded the petitioner, were examined. The petitioner did not choose to examine any defence witnesses. A number of documents were also marked on behalf of the Bank.

Charge No.1:

In respect of Charge No.1, the inquiring authority found, on the basis of the oral and documentary evidence, that the petitioner while officiating as a Branch Manager had sanctioned (agricultural cash credit) ACC limit of Rs.One Lakh on 05-11-1997 to one Smt.B.Achamma, who was already a defaulter, as her earlier loan account disbursed on 16-05-1995 was outstanding and was overdue Rs17,628/-, as on the date of the fresh sanction. The earlier loan was closed later on
25-11-1997, after the disbursement of the new ACC limit of Rs. One lakh on 05-11-1997. The inquiring authority also concluded that the petitioner had full knowledge of the existence of the overdue earlier account at the time of the fresh sanction. This conclusion (as to the petitioner's knowledge) was based on the compelling inference that the petitioner was working as a Field Officer in the branch since 22-12-1995 and had adequate opportunity to be acquainted with existing accounts of the bank, particularly as overdue accounts are required to be closely monitored by the Field Officer (the substantive post held by the petitioner). The inquiring authority also found that the petitioner had been authenticating the balances in the earlier overdue accounts since March 1996. With regard to another aspect of this charge [allegation 1(b)], the inquiring authority found the charge proved viz., that the petitioner failed to follow the scales of finance approved by the District Technical Committee, arrived at the quantum of finance for raising crops for both rabi and kharif and disbursed the entire amount in one season, but, observed that the failure to

follow the approved scales of finance was only on account of confusion between the measure “per hectare” and “per acre” and that the act of not following the approved scales of finance does not appear to be deliberate. The inquiring authority also found another aspect of Charge No.1 (viz., granting of a loan to Achamma in respect of the same lands for which the loans were granted to the son and grandson of Achamma [allegation 1(c)] proved, on the basis of documentary evidence. The inquiring authority also found that the petitioner deliberately furnished wrong information in the control form submitted to the Controlling Authority. This was in respect the remaining aspect of charge No.1, i.e. allegation 1(d).

Charge No.2:

Charge No.2 relates to the allegation that the petitioner had misappropriated the amounts received from the borrowers for credit in their accounts and had failed to account for the amounts so received, in the branch books. The imputation under this charge is that the petitioner had issued counter-foils to borrowers acknowledging receipt of the cash but had failed to account for the amounts in the branch book and had thus misappropriated the amounts so received. Admittedly this is a charge of misappropriation and a charge of serious misconduct. On behalf of the management PW.2 the former Branch Manager was examined, who on the basis of the records of the Branch including the counter-foils signed by the petitioner testified that specified amounts were received by the petitioner from three (3) customers U.Nagamma, V.Prabhavathamma and M.Bala Swamy, the receipt of the amounts was acknowledged but not credited either to the Protested Bills Account nor to the charges account. Pw.2 also testified that these facts were informed to the Zonal Office by the witness in August-1998 by a written communication. The defence of the petitioner to this charge was that he had credited all the amounts received by him during his field inspection, to the charges account. In respect of the amount paid by one of the borrowers Smt. V.Prabhavathamma the petitioner pleaded that the amount received from this customer was paid to one Thimmaiah Setty, the Ex-Sarpanch of the village and a neighbour of the borrower, as Thimmaiah Setty had earlier repaid the loan amount during annual closing time. With respect to the amount received from the other customer M.Bala Swamy, the petitioner pleaded that the amount received was returned to the son of the customer at the customer’s request on the very next morning, to meet some urgent medical contingency. He

also put forth a defence that the borrowers did not make a written complaint regarding non-crediting of the amounts paid by him and that PW.2 was not the Branch Manager when the relevant counter-foils were signed and issued by the petitioner and that PW.1 was the Branch Manager at the material time.

The inquiring authority held that in all the three instances, there was ample documentary evidence, as per Exs.32 to 36 and 40 and the oral evidence of PW.2, that the petitioner had singed and issued counter-foils in all the three cases. The inquiring authority also concluded that PW.2 is familiar with and had identified the signature of the petitioner and therefore the fact that PW.2 was not the Branch Manager at the material time is of no consequence. It was also found that the petitioner had at no point of time denied the receipt of the amounts in question nor issuance of the counter-foils under his signature. It was also found on the basis of documentary evidence (Exs.29, 31,33,35,37 and 39) and the testimony of PW.2 that the amounts received by the petitioner from the three borrowers were not credited to the respective accounts. The defence plea that the amounts were refunded to Thimmaiah Setty in respect of V.Prabhavathamma and to the son of Bala Swamy the other borrower, was rejected on the ground that there was no evidence to substantiate this plea. The inquiring authority concluded that the petitioner had misappropriated the amounts received from the three borrowers and accordingly held Charge No.2 as proved.

Charge No.3:

This charge is that the petitioner had recommended ACC limit of Rs.12,000/- to a borrower despite a default in an earlier crop loan sanctioned, which was recorded in the branch Protested Bills Account; and that the petitioner had disbursed the crop loan when the borrower paid only an amount of Rs.8,944/- leaving a debit balance of Rs.4,494/-. The management presented the documentary evidence; Exs.41, 43,45 and 46 being the relevant ledger transaction sheets and the ACC application dated 05-10-1996 of the borrower – Bazaranna. On behalf of the petitioner it was pleaded that he was not aware that Bazaranna was already having a loan account, which was overdue and had been transferred to the Protested Account and that on coming to know of this fact he had arranged for closure of the old loan account on 08-01-1997. He also pleaded that on 18-09-1997, after part payment on 12-09-1997, the borrower had requested renewal of the loan account to the extent of his repayment

due to financial stringency and the petitioner had accepted the request on humanitarian grounds.

On considering documentary evidence and the oral testimony of PW.2, the inquiring authority concluded that as the petitioner had worked as a Field Officer from 22-12-1995 to 14-07-1998 and the ACC limit of Rs.2,000/- of the said borrower was earlier renewed on 23-07-1992 and was transferred to the P.B.Account on 30-01-1996 just a month after the petitioner reported at the Branch, it is possible that this account might not have come to the petitioner's knowledge during the short period. However, with regard to another account ACC.K1/90 (of the same borrower), the inquiring authority found that the petitioner had disbursed Rs.3000/- and Rs.5,000/- on 18-09-1997 and 22-09-1997 respectively when the borrower had paid only part amount of Rs.8,944/- on 12-09-1997 and the earlier account had a debit balance of Rs.4,494/-. The inquiry authority recorded that this fact was accepted by the petitioner in his written statement of defence. On this analysis, the inquiring authority found charge No.3 partly proved.

Charge No.4:

In respect of Charge No.4, the inquiring authority concluded, on the basis of the oral and documentary evidence, that the petitioner had arrived at the quantum of finance for raising crops for both rabi and kharif by applying the scales of finance approved by the District Technical Committee applicable "per hectare" to "per acre". However, the inquiring authority recorded that this could be an error committed on account of confusion by the petitioner between "per hectare" and "per acre" measures. Charge No.4 is on two aspects, one regarding failure to follow the scale of finances and the other regarding the disbursal of the entire amount, meant for rabi and kharif season, in one season. On the basis of substantial documentary evidence, the inquiring authority rejected the defence plea that the disbursal in one season was on the basis of an existing practice in the Branch and held the charge as proved. It was concluded that there was no evidence to substantiate the defence plea that there was established practice in the branch of disbursing the crop loans meant for both the seasons in one season alone. The other defence plea that the loans in respect of which the allegation is made were well secured, was rejected as irrelevant.

It is seen from the elaborate note drawn up by the third respondent-disciplinary authority dated 04-09-2000 that the appointing authority has meticulously

considered the record of the disciplinary proceedings; the evidence on record in the disciplinary proceedings; the findings of the inquiring authority and had also recorded his own conclusions and findings in respect of each of the charges. The disciplinary authority also recorded adequate reasons for the satisfaction that the penalty of removal from service is a penalty proportionate to the findings of guilt arrived at. The disciplinary authority recorded that the proven acts of the misconduct establish serious violations of the bank systems and procedures; there is established undesirable conduct on the part of the petitioner and his continuance in service would not be in the interest of the bank and that though the irregularities committed by the officer warrant an extreme penalty of dismissal, taking into consideration the petitioner's age, length of service put in by him and on humanitarian consideration, the disciplinary authority is satisfied and inclined to take a lenient view. The disciplinary authority was satisfied that the penalty of removal from service would be commensurate in the circumstances and recommended accordingly.

The second respondent-appointing authority, having considered the carefully drawn up report of the inquiring authority and an equally disciplined note of the disciplinary authority, concurred with the conclusion as to the guilt; the satisfaction with regard to the penalty to be imposed on the petitioner; and by his order dated 05-09-2000, imposed the penalty of removal from service and the treatment the period of suspension.

The appellate authority independently considered the record of the domestic inquiry, the chronology of events leading to the report of the inquiring authority and the proceedings of the disciplinary and appointing authorities; considered each of the points in appeal and recorded his appellate conclusions in respect of each of the grounds of appeal. One of the appellate grounds urged by the petitioner was that he was not given any training even after his treatment as a Branch Manager, that irregularities urged against him are only procedural and that no loss was caused to the bank on account of these irregularities. The appellate authority also dealt with this plea in the appeal and held that the petitioner had already worked as an officer for about ten (10) years and as a Field Officer for more than a year by the time the alleged irregularities were committed and the petitioner cannot escape responsibility for the lapses on the specious plea that no training was imparted to him. He concurred with the conclusion that the petitioner failed to act with honesty, integrity

and the degree of diligence expected of an officer of the bank.

The appellate authority concluded that the misconduct the petitioner was charged with and found guilty of, were serious, have resulted in a financial loss to the Bank and that there were no mitigating circumstances to consider reduction of the penalty. The appeal was dismissed.

Personal hearing at the appellate stage:

Sri Ayyapu Reddy the learned counsel for the petitioner urged that the order of the appellate authority is invalid for having failed to provide personal hearing to the petitioner at the appellate stage.

In the absence of a specific prescription in the relevant rules, a personal or oral hearing at the appellate or revisional stage is not a mandatory requirement nor a necessary postulate of reasonable opportunity – See **State of Gujarat Vs. Pagi Burabhai** (), ***In re Vs. Shanmuga Mudaliar*** ().

On behalf of the petitioner reliance is placed on the decision of a learned single judge of this Court in ***G.Manoharan Vs. Bank of Maharashtra, Pune and others***(). In **Manoharan's** case this Court, relying on the decision of the Full Bench of Punjab and Haryana High Court in **Ram Niwas Bansal Vs. State Bank of Patiala and another** () held that though there is no specific requirement of personal hearing to be afforded by an appellate authority, principles of natural justice require that personal hearing should be provided when a major punishment of removal is inflicted, " so as to give a fair hearing and to represent his case before the Appellate Authority". In **Bansal's** case (7^{th} supra) the Punjab and Haryana Full Bench found that regulation 70 of the State Bank of Patiala (Officers) Service Regulations 1979 did not specifically provide for a right of hearing before the Appellate Authority. Nevertheless the Full Bench held that such a right of hearing at the appellate stage accrued as a principle of natural justice. Reliance for this conclusion was placed by the Punjab and Haryana Full Bench on several decisions, the expanding principles of natural justice and of Administrative Law.

In ***State Bank of Patiala Vs. Mahendra Kumar Singhal*** () the Supreme Court was confronted with the very specific issue as to whether the non-affording of personal

hearing at the appellate stage vitiated the appellate decision. In the case before the Supreme Court a Bank employee was visited with the penalty of dismissal. He unsuccessfully pursued a departmental appeal. He then approached the High Court. The High Court quashed the order of the appellate authority on the ground that no personal hearing was given before rejection of the appeal and the matter was remitted to the appellate authority for disposal after hearing the employee personally. The Supreme Court allowed the Civil Appeal as under:

> " ***No rule has been brought to our attention which requires the appellate authority to grant a personal hearing. The rule of natural justice does not necessarily in all cases confer a right of audience at the appellate stage. That is what this Court observed in F.N.Roy Vs. Collector of Customs, Calcutta (1957 SCR 1151, 1160). We, therefore, think that the impugned order is not valid. Our attention was, however, drawn to the decision in Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi [(1978) 1 SCC 405,446] wherein observation is made in regard to the right of hearing. But that was not a case of a departmental inquiry, it was one emanating from Article 324 of the Constitution. In our view, therefore, those observations are not pertinent to the facts of this case.***
>
> ***We, therefore set aside the impugned order and remit the matter back to the High Court for disposal of the writ petition on the other grounds and contentions raised therein. Since the matter is fairly old, the High Court may expedite the same. The appeal is allowed with no order as to costs."***

This decision was not brought to the notice of the Punjab and Haryana Full Bench which considered ***Bansal's* case** (7^{th} supra) nor to the notice of a learned single judge of this Court in **Manoharan's** case (6^{th} supra).

The principle is clearly enunciated by the Supreme Court, namely, that in the absence of a specific requirement by the relevant rules, there is no right to a personal hearing at the appellate stage and the rules of natural justice do not require that in all cases a right of audience to be provided and at the appellate stage. To the same effect is the principle discernable from the decision of the Supreme Court in

Union of India Vs. Jesus Sales Corporation (). In a recent decision in **Ganesh Santa Ram Sirur Vs.State Bank of India and another** () the Supreme Court reiterated that principles of natural justice require only that an opportunity to be heard be provided before an adverse order is passed including in an appeal and that such opportunity in all circumstances and invariably, does not include a personal hearing. In view of the decisions of the Supreme Court referred to above, in particular the decision in **Mahendra Kumar Singhal's case** (8th supra), the decision of the Punjab and Haryana Full Bench in ***Bansal's case*** (7th supra) and of the learned single judge of this Court in ***Manoharan's case*** (6th supra) must respectfully be considered *per incuriam*. The order of the appellate authority in this case is not liable to be declared invalid only on the ground that no opportunity of personal hearing was afforded to the petitioner prior to the appellate decision.

The petitioner's challenge in this writ petition based on the contention that the disciplinary authority had mechanically passed the order without considering the defence put forth, is misconceived. As already analyzed, the disciplinary authority and the appointing authority as well have, in elaborate detail considered all aspects of the matter - the oral evidence on record, the case of the management and of the petitioner and have recorded detailed reasons to support the conclusions. The note of the disciplinary authority dated 04-09-2000 establishes the critical consideration by the disciplinary authority to the record. This note was also communicated to the petitioner by the disciplinary authority. Similarly the appointing authority has also considered the entire record. This aspect of the petitioner's challenge does not therefore merit acceptance.

The another contention is that charges 1, 3 and 4 do not constitute misconduct but are in the nature of mere irregularities and therefore do not justify imposition of any punishment. The service rules governing the petitioner in the Chapter relating to conduct [Rule 50(4)] ordain that every Officer shall, at all times, take all possible steps to ensure and protect the interest of the Bank and discharge his duties with utmost integrity, honestly, devotion and diligence and do nothing which is unbecoming of a bank official. Rule 66 of these rules mandates that breach of any of the provisions of these rules shall be deemed to constitute misconduct punishable under the rules. Rule 67 specifies that any of the specified penalties may be imposed on an officer for an act of misconduct or for any other good and sufficient reason. The charges 1, 3 and 4 made against the petitioner pertain to serious

transgressions of official procedures, disregard of the interest of the Bank and absence of due and the requisite standard of diligence. This conduct is certainly misconduct as defined in the rules. This contention therefore does not merit acceptance.

On the above analysis there are no merits and the writ petition is dismissed but in the circumstances without costs.

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GODA RAGHURAM,J

27th JANUARY 2006

LR COPY TO BE MARKED: YES

*TSNR